

REMARKS:

The Office Action dated September 30, 2010, has been received and carefully noted. The above amendments to claim 1, and the following remarks, are submitted as a full and complete response thereto.

By this Response, claim 1 has been amended to more particularly point out and distinctly claim the subject matter of the present invention. No new matter has been added, and no new issues are raised which require further consideration and/or search. Support for the above amendments is provided in the specification, at least, on page 14, lines 6-19, and as shown in Figures 1 and 2. Accordingly, claims 1, 5, 17 and 19 are currently pending in the application, of which claim 1 is the only independent claim.

In view of the above amendments and the following remarks, Applicant respectfully requests reconsideration of claims 1, 5, 17 and 19, and timely withdrawal of the pending claim rejections for the reasons discussed below.

The Office Action alleged that claim 37 is directed to an invention that is independent or distinct from the invention originally claimed. In particular, the Office Action alleged that the “slot” recited in claim 37 is directed to the slot (18) as shown in the non-elected Figures 4 and 5, and thus withdrew claim 37 from consideration as being directed to a non-elected invention (*see* Office Action on page 2). Applicant respectfully disagrees with the allegations presented in the Office Action.

Applicant respectfully submits that claim 37 is directed to the elected invention. Applicant elected to prosecute claims 1, 5 and 16-19, as shown in Figures 1-3, in the

Response filed on August 13, 2008. Claim 37 was added in the Response filed on August 26, 2010, which recites features for an aperture located in a tree retaining member. As discussed in the specification, at least, on page 14, lines 6-19, and as shown in Figures 1 and 2, the aperture (8) in the tree retaining member (6) includes a slot (*i.e.*, an opening) in a curved surface (*i.e.*, the side) of the cylindrical tree retaining member (6). The aperture (8) is located at a connection between the tree retaining member (6) and a base (10). The features recited in claim 37 are clearly illustrated in Figures 1 and 2, and therefore directed to the elected invention. Claim 37 depends from, and further limits, claim 1. As will be discussed below, Kalman fails to disclose or suggest every element recited in claim 1, and therefore would also fail to disclose or suggest every element recited in claim 37. For at least these reasons, Applicant respectfully requests examination of claim 37.

The Office Action again rejected claims 1, 5, and 17 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 6,568,127 of Kalman. Applicant respectfully submits that claims 1, 5 and 17 recite subject matter that is neither disclosed nor suggested in Kalman.

Claim 1, upon which claims 5, 17, 19 and 37 depend, recites, in part, “wherein the tree retaining member comprises an aperture located on a side adjacent to a base of the tree retaining member and a substantially cylindrical hollow member” (emphasis added).

As will be discussed below, Kalman fails to disclose or suggest every element recited in claims 1, 5, and 17, and therefore fails to provide the features of the claims discussed above.

Kalman is directed to a tree stand with a liquid reservoir. The tree stand includes a base having a receptacle for receiving and supporting the trunk of a tree. A fluid reservoir that stores a fluid is detachably connected to the base. A series of valves are operable to control the flow of water from the fluid reservoir into the receptacle (Kalman, col. 1, lines 36-56). Kalman discusses a stand 12 that includes a base 16. The base 16 includes a receptacle 18 for receiving and supporting a trunk of a tree. Receptacle 18 holds a supply of water which is supplied to the trunk of the tree. Kalman further discusses a fluid reservoir 14 that is detachably mounted to the base 16 within a holder 24. The fluid reservoir 14 provides water on a continuous basis to the receptacle 18 of the stand 12 through a flexible tube 76 *in the base* of the receptacle 18.

Applicant respectfully submits that Kalman fails to disclose or suggest, at least “wherein the tree retaining member comprises an aperture located on a side adjacent to a base of the tree retaining member and a substantially cylindrical hollow member,” as recited in claims 1, 5 and 17. As previously discussed, Kalman discusses that the flexible tube 76 is inserted in an opening located *in the base* of the receptacle 18. Thus, Kalman fails to disclose or suggest that the receptacle 18 includes “an aperture located on a side adjacent to a base of the tree retaining member,” as recited in claims 1, 5 and 17, and therefore fails to disclose or suggest every element recited in these claims.

Furthermore, claims 5 and 17 depend from, and further limit, claim 1. Accordingly, claims 5 and 17 should be allowable for at least their dependency upon an allowable base claim. For at least the reasons discussed above, Applicant respectfully requests withdrawal of this rejection, and reconsideration of claims 1, 5 and 17.

The Office Action again rejected claim 19 under 35 U.S.C. §103(a) as being allegedly unpatentable over Kalman. The Office Action acknowledged that Kalman fails to disclose or suggest that the fluid reservoir and the tree retaining member are in fluid communication. The Office Action alleged, however, that it would have been obvious to a person of skill in the art to have modified the tree stand of Kalman to include the fluid reservoir and the tree retaining member in fluid communication, since to do so would allow the water to drain more efficiently. Applicant respectfully submits that claim 19 recites subject matter that is neither disclosed nor suggested in Kalman.

As previously discussed, Kalman fails to disclose or suggest every element recited in independent claim 1, and therefore would also fail to disclose or suggest every element recited in claim 19. In particular, Kalman fails to disclose or suggest, at least “wherein the tree retaining member comprises an aperture located on a side adjacent to a base of the tree retaining member and a substantially cylindrical hollow member,” as recited in claims 1 and 19. Furthermore, claim 19 depends from, and further limits, claim 1. Accordingly, claim 19 should be allowable for at least its dependency upon an allowable base claim.

In conclusion, Applicant respectfully submits that claims 1, 5, 17, 19 and 37 recite subject matter that is neither disclosed nor suggested in Kalman. These distinctions are more than sufficient to render the claimed invention unanticipated and non-obvious. For at least the reasons discussed above, it is therefore respectfully requested that all of claims 1, 5, 17, 19 and 37 be allowed, and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicant's undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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Enclosure: Petition for Extension of Time